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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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No. 309

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ASA RAY FRENCH AND GLENDA BEATRICE  
FRENCH,

*Petitioners,*

*vs.*

DONALD LINLEY FRENCH, A MINOR, BY MILDRED B.  
FRENCH, HIS MOTHER AND NEXT FRIEND

---

PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF KANSAS AND BRIEF IN SUP-  
PORT THEREOF.

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RUSSELL N. PICKETT,  
HERBERT S. BROWN,  
*Counsel for Petitioners.*

CARL VAN RIPER,  
RUSSELL L. HAZZARD,  
*Of Counsel.*

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SUPREME COURT OF THE UNITED STATES

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**No. 309**

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ASA RAY FRENCH AND GLENDA BEATRICE  
FRENCH,

*Petitioners,*

*vs.*

DONALD LINLEY FRENCH, A MINOR, BY MILDRED B.  
FRENCH, HIS MOTHER AND NEXT FRIEND

---

**PETITION FOR WRIT OF CERTIORARI**

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*To the Honorable Chief Justice and Associate Justices of  
the Supreme Court of the United States:*

Your Petitioners, Asa Ray French and Glenda Beatrice French, respectfully show as grounds for the issuance of a Writ of Certiorari to the Supreme Court of Kansas:

A

**Summary Statement of the Matter Involved**

Petitioners are the named beneficiaries of a United States Government Life Insurance Policy issued to their son, Donald Ray French, deceased. This is a proceeding to

collect Five Thousand (\$5,000.00) Dollars of the proceeds of such policy from Petitioners as the result of an alleged oral agreement alleged to have been made by Petitioners to Respondent's mother to pay over to Respondent the sum of Five Thousand (\$5,000.00) Dollars out of the proceeds of said policy.

Petitioners are the father and mother of Donald Ray French, deceased U. S. Navy officer, and the paternal grandfather and grandmother of Respondent, and the former father-in-law and mother-in-law of Respondent's mother, Mildred B. French; Respondent is the son of Donald Ray French, deceased U. S. Navy officer.

Donald Ray French was killed in an automobile accident at Brunswick, Georgia, on March 31st, 1943, while still on active duty with the United States Navy. The United States Government then paid to Petitioners, as the named beneficiaries in the United States Government Life Insurance Policy which Donald Ray French had previously taken out on his life, the Ten Thousand (\$10,000.00) Dollars proceeds of such policy.

Respondent then brought this suit against Petitioners to have Petitioners pay over to him Five Thousand (\$5,000.00) Dollars of the proceeds of said policy.

The trial of this case was held in the District Court of Ford County, Kansas, on the 18th day of December, 1944. Respondent's mother was Respondent's only witness, and she testified to the matters above set forth. The Petitioners demurred to the evidence produced by Respondent, and stood upon such demurrer and did not produce any evidence in their behalf.

The District Court of Ford County, Kansas, rendered judgment for Respondent on the 22nd day of September, 1945, and Petitioners duly prosecuted their appeal to the Supreme Court of Kansas.

The Supreme Court of Kansas on the 6th day of April, 1946, affirmed the judgment of the District Court of Ford County, Kansas, on the ground that the oral agreement allegedly made by Petitioners was enforceable.

On the 24th day of April, 1946, Petitioners herein filed their motion for Rehearing setting forth the errors of the Supreme Court of Kansas and pointing out that such judgment and decision violated the provisions of the Act of August 12, 1935, Chapter 510, Section 3, 49 Stat. 609, as amended by Section 5 of the Act of October 17, 1940, 54 Stat. 1195 (U. S. C. A., Title 38, Section 454a) (R. 52).

On the 10th day of May, 1946, the Supreme Court of Kansas, without further comment, overruled Petitioner's Motion for Rehearing.

Petitioners herein thereby completely exhausted all remedies available to them, save and except this Writ of Certiorari, and have proceeded to file this proceeding with this Court within the three months time limit provided for in pertinent Federal Law.

## B

### **Basis of Jurisdiction**

(1) The judgment of the Supreme Court of Kansas determined adversely to Petitioners the right, title, privilege, and immunity of Petitioners especially set up and claimed by Petitioners under the laws of the United States, in that it fails to give full faith and credit to the laws of the United States, as guaranteed Petitioners by the provisions of Section 1 of Article IV of the Constitution of the United States.

(2) The jurisdiction of this Court is urged under Section 237 of the Judicial Code, as last amended by an Act of January 31, 1928, Chapter 14, Section 1, 45 Stat. 54

(U. S. C. A., Title 28, Section 344 and particularly Section 344 (b) thereof).

## C

### Questions Presented

Petitioner respectfully urges the following questions for the consideration of this Court:

1. Was not the Supreme Court of Kansas required to recognize the validity of the Act of August 12, 1935, Chapter 510, Section 3, 49 Stat. 609 as amended by Section 5 of the Act of October 17, 1940, 54 Stat. 1195 (U. S. C. A., Title 38, Section 454a), under the full faith and credit clause of the Federal Constitution? (Section 1, Article IV, Constitution of the United States.)

2. Has not the Supreme Court of Kansas, by its decision in this case, entirely ignored the established law of the United States, deprived Petitioners of their property without due process of law, in violation of the V and XIV Amendments to the Constitution of United States.

## D

### Reasons Relied On for the Allowance of the Writ

(1) Section 237 of the Judicial Code, as last amended by an Act of January 31, 1928, Chapter 14, Section 1, 45 Stat. 54 (U. S. C. A., Title 28, Section 344 (b)) provides:

"It shall be competent for the Supreme Court, by Certiorari, to require that there be certified to it for review and determination \* \* \* any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where \* \* \* any title, right, privilege or immunity is specially set up or claimed by either party under \* \* \* any \* \* \* statute of \* \* \* the United States."



Section 1 of the XIV Amendment to the Federal Constitution provides:

“ \* \* \* nor shall any State deprive any person of life, liberty or property without due process of law  
\* \* \* ”

Petitioners contend that the Supreme Court of Kansas was required to recognize the Act of August 12, 1935, Chapter 510, Section 3, 49 Stat. 609, as amended by Section 5 of the Act of October 17, 1940, 54 Stat. 1195 (U. S. C. A., Title 38, Section 454a), and to render its decision in the instant case accordingly. The orderly administration of justice requires that when rights are clearly and unequivocally set out by legislation of the Congress of the United States, that such legislation be recognized and applied by all Courts.

(2) The Supreme Court of Kansas by its decision has decided a Federal question of substance not heretofore determined by the Supreme Court of the United States. Subsection 5 (a) of Rule 38, United States Supreme Court Rules.

(3) The importance of this case far transcends the interests of the parties to this suit. There have been several million United States Government Life Insurance policies issued to members of the armed forces of the United States during World War II. The rights of the holders of such policies and the beneficiaries named therein have been designated by pertinent Federal legislation. The decision in this case will set the pattern as to whether or not Federal legislation governing the rights of such policy holders and their beneficiaries will be followed. Only through the exercise by this Court of its discretion in the granting of this Writ can the established law of the United States, and the rights afforded by such law, be effected and preserved, not only

to these Petitioners, but to the many other million holders and the named beneficiaries of other United States Government Life Insurance Policies.

WHEREFORE, your Petitioners pray that a Writ of Certiorari be issued under the seal of this Court directed to the Supreme Court of Kansas, commanding said Court to certify and send to this Court a full and complete transcript of the record and proceedings in the case of Donald Linley French, a minor, by Mildred B. French, his mother and next friend, Plaintiff, *v.* Asa Ray French and Glenda Beatrice French, Defendants, Number 36,559, to the end that this cause may be reviewed and determined by this Court as provided for in the statutes of the United States, and that the findings and decision of said Supreme Court of Kansas to which Petitioners have objected be reversed by this Court, and for such further relief as to this Honorable Court may seem proper.

RUSSELL N. PICKETT,  
HERBERT S. BROWN,  
*Counsel for Petitioners*

RUSSELL L. HAZZARD,  
CARL VAN RIPER,  
*Of Counsel.*

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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**No. 309**

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ASA RAY FRENCH, AND GLENDA BEATRICE  
FRENCH,

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*vs.*

DONALD LINLEY FRENCH, A MINOR, BY MILDRED B.  
FRENCH, HIS MOTHER AND NEXT FRIEND

---

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF  
CERTIORARI**

---

**I**

**Opinion of the Court Below**

The opinion of the Supreme Court of Kansas in the case of Donald Linley French, a minor, by Mildred B. French, his mother and next friend, Respondent, *vs.* Asa Ray French and Glenda Beatrice French, Petitioners, is not yet reported in either the official or Pacific Reports. Such opinion may be found at pages 24 to 29, inclusive, of the Transcript filed with this Court.

## II

**Statement as to Jurisdiction**

Petitioners, in support of the jurisdiction of the Court to review the above cause on Writ of Certiorari, respectfully states:

## A

**Statutory Provisions Sustaining Jurisdiction**

Jurisdiction of the Court is based upon the Judicial Code, Section 237, as last amended by the Act of January 31, 1928, Chapter 14, Section 1, 45 Stat. 54 (U. S. C. A., Title 28, Section 344 and particularly Section 344 (b) thereof), which provides in part as follows:

“It shall be competent for the Supreme Court, by Certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by Writ of Error, any cause wherein a final judgment has been rendered by the highest court of a state in which a decision could be had \* \* \* where any title, right, privilege or immunity, is specially set up or claimed by either party under \* \* \* any \* \* \* statute of \* \* \* the United States; \* \* \*.”

## B

**Date of Decree of State Court**

The judgment and decree sought to be reviewed was rendered on April 6, 1946, by the Supreme Court of Kansas. Petitioner's motion for rehearing was duly filed on April 24, 1946. On May 10, 1946, Petitioner's motion for Rehearing was denied. This case was decided by the Supreme Court of Kansas, *en banc*, and is a final judgment,

adverse to Petitioners, rendered by the highest court of Kansas.

*Mower v. Fletcher*, 114 U. S. 117, 29 L. Ed. 117, 5 Sup. Ct. Rep. 799;

*Gorman v. Washington University*, 316 U. S. 98, 86 L. Ed. 1300, 62 Sup. Ct. Rep. 962.

## C

### Nature of Case and Ruling Below

The instant case was instituted in the District Court of Ford County, Kansas. The object was to obtain a judgment requiring Petitioners, Asa Ray French and Glenda Beatrice French, to pay Respondent, Donald Linley French, the sum of Five Thousand (\$5,000.00) Dollars, it being contended by Respondent that Petitioners owed him this sum as the result of an oral promise of Petitioners to pay such sum out of the proceeds of the Government Life Insurance policy (R. 3 to 7).

Petitioners were the named beneficiaries of Respondent's father's United States Government Life Insurance policy, and Respondent contended that the oral promise on the part of Petitioners to pay over the said sum of Five Thousand (\$5,000.00) Dollars was made in order to conceal the fact of Respondent's father's marriage from U. S. Navy Authorities. At the time the alleged promise was allegedly made, Respondent was not in *esse*, but was an unborn child (R. 4).

Respondent's father, Donald Ray French, was killed on March 31, 1943, and the proceeds of his Government Life Insurance Policy was paid to Petitioners by the United States Government as the named beneficiaries in said policy (R. 6).

Petitioners filed an answer admitting all things in Respondent's petition alleged, except, Petitioners denied ever

having entered into an agreement with Respondent's mother to pay over to Respondent Five Thousand (\$5,000.00) Dollars out of the proceeds of the Government Life Insurance Policy, and also that any such agreement would be void and illegal (R. 7 to 9).

The issues were thus joined, and the trial of the case was held on the 18th day of December, 1944, before the Hon. Karl Miller, Judge of the District Court of Ford County, Kansas. Respondent's mother testified to the matters alleged in Respondent's petition, and Respondent rested his case. Petitioners then made a motion for Judgment on the Pleading and Evidence, which was overruled by the Court (R. 10). Petitioners then made an oral demurrer to Respondent's testimony and evidence for the reason that such testimony and evidence failed to show any right of recovery and failed to prove any cause on which to base a judgment, which demurrer was overruled by the Court (R. 10). The Petitioners then rested their case without the introduction of any evidence. The Court then discharged the jury hearing the case without submitting to it any questions or issues of fact, and made findings: "That the contract for the Respondent's benefit was entered into by the Petitioners as alleged in Respondent's petition and as a matter of law that the Petitioners were bound by said contract for the benefit of the Respondent, and that the Respondent was entitled to recover Five Thousand (\$5,000.00) Dollars from Petitioners" (R. 10).

Petitioners then filed a motion for a new trial on the 22nd day of September, 1945 (R. 11), which was overruled by the court on the 6th day of October, 1945 (R. 11), and judgment entered for Respondent in the sum of Five Thousand (\$5,000.00) Dollars (R. 11).

On the 19th day of November, 1945, Petitioners filed a notice of appeal on Respondent and his Attorneys to the Supreme Court of Kansas (R. 12).

The Supreme Court of Kansas rendered its decision in this case on the 6th day of April, 1946, and affirmed the judgment for the Respondent, holding that the contract for the benefit of Respondent was entered into by Petitioners, and that such contract was an enforceable one on the part of Respondent and affirmed the judgment of the District Court of Ford County, Kansas (R. 24 to 29).

On the 24th day of April, 1946, Petitioners filed a motion for rehearing in the Supreme Court of Kansas, asserting that the judgment of the trial court and the decision of the Supreme Court of Kansas sustaining it, violated and was contrary to the Act of August 12, 1935, Chapter 510, Section 3, 49 Stat. 609, as amended by Section 5 of the Act of October 17, 1940, 54 Stat. 1195 (U. S. C. A., Title 38, Section 454a), which prohibits the assignment of the proceeds of Government Life Insurance policies (R. 30 to 32). Petitioners had made this contention in the trial court (See Certificate of Hon. Karl Miller, Judge, District Court, Ford County, Kansas, Addendum No. I appended hereto) and on appeal. However, the Supreme Court of Kansas did not refer to this Federal Statute (Act of August 12, 1935, Chapter 510, Section 3, 49 Stat. 609 as amended by Section 5 of the Act of October 17, 1940, 54 Stat. 1195 (U. S. C. A., Title 38, Section 454a)), or the Federal case (*Bradley v. United States*, 143 F. (2d) 573) cited by Petitioners in their arguments and briefs. Whether overlooked or intentionally disregarded by the Supreme Court of Kansas, Petitioners do not know.

Likewise, relative to Petitioners' motion for Rehearing, the Supreme Court of Kansas denied such motion without comment.

The Supreme Court of Kansas has by its decision in this case completely ignored the Federal Statute which governs the rights of Petitioners in this case.

## D

**Cases Believed to Sustain Jurisdiction**

This Court has jurisdiction to review any decision wherein any title, right, privilege, or immunity is specially set up or claimed by either party under any statute of the United States, and wherein the protection of Section 1 of Article IV, and the XIV Amendment to the Constitution, are sought to preserve the rights of a litigant.

*Sage v. Hampe*, 35 Sup. Ct. Rep. 94, 235 U. S. 99, 59 L. Ed. 147;

*Steele v. Louisville N. R. Co.*, 65 Sup. Ct. Rep. 226, 323 U. S. 192, 89 L. Ed. —;

*Chicago, Burlington and Quincy Railroad Company v. City of Chicago*, 166 U. S. 226, 41 L. Ed. 979, 17 Sup. Ct. Rep. 581;

*Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 52 L. Ed. 78, 28 Sup. Ct. Rep. 7;

*Betts v. Brady*, 316 U. S. 455, 86 L. Ed. 1595, 62 Sup. Ct. Rep. 1252;

*Muhlker v. New York & Harlem Railroad Company*, 197 U. S. 544, 49 L. Ed. 872, 25 Sup. Ct. Rep. 522.

## III

**Statement of the Case**

In the interest of brevity, Petitioners do not here make a statement of the case, since a full statement has been given under heading "A" in the Petition for Writ of Certiorari and under heading II C in the Brief in Support of Petition for Writ of Certiorari.



## IV

**Specifications of Errors**

1. The Supreme Court of Kansas erred in its decision and judgment by totally and patently failing to recognize the applicable statutes of the United States and decisions of the Federal Courts requiring a decision and judgment in Petitioner's favor so as to deprive Petitioners of their rights as specially granted them under the applicable United States Statute, viz: The Act of August 12, 1935, Chapter 510, Section 3, 49 Stat. 609, as amended by Section 5 of the Act of October 17, 1940, 54 Stat. 1195 (U. S. C. A., Title 38, Section 454a).

**Summary of Argument**

The failure of the Supreme Court of Kansas to recognize the Federal Statute (the Act of August 12, 1935, Chapter 510, Section 3, 49 Stat. 609, as amended by Section 5 of the Act of October 17, 1940, 54 Stat. 1195 (U. S. C. A., Title 38, Section 454a), deprived Petitioners of rights and immunities granted them by said statute.

## VI

**Argument**

## A

The judgment of the trial court and the decision of the Supreme Court of Kansas sustaining such judgment violate, and are contrary to, the United States Statute relating to United States Government Life Insurance and assignment of the proceeds thereof, viz: Act of August 12, 1935, Chapter 510, Section 3, 49 Stat. 609, as amended by Section 5 of

the Act of October 17, 1940, 54 Stat. 1195 (U. S. C. A., Title 38, Section 454a), said statute being as follows, viz:

“Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments.”

Congress by this statute states the policy of the Government relative to the rights of named beneficiaries to the proceeds of United States Government Life Insurance Policies. A State Court cannot regard or disregard the laws of the United States at its pleasure. *Sage v. Hampe*, 35 Sup. Ct. Rep. 94, 235 U. S. 99, 59 L. Ed. 147.

The State Courts are required to give to the statutes of the United States the same recognition, force and effect accorded the laws of the States. United States Constitution, Article IV, Section I.

The laws of the United States are part of the *lex fori* of a state. *Davis v. Corona Coal Company*, 265 U. S. 219, 44 Sup. Ct. Rep. 562, 68 L. Ed. 987.

In a similar case the Tenth Circuit Court of Appeals held in the case of *Bradley v. United States*, 143 F. (2d) 573, that where the Plaintiff (the mother of a deceased army officer) alleged an agreement between herself and the deceased's widow to compromise their respective claims to the proceeds of the deceased's United States Government Life Insurance on the basis of an equal division thereof, that such an agreement constitutes an assignment by the

designated beneficiary of payments of benefits due or to become due under a National Service Life Insurance Policy, and that such assignment is specifically prohibited by Section 3 of the Act of August 12, 1935, 49 Stat. 609, as amended by Section 5 of the Act of Oct. 17, 1940, 54 Stat. 1195, (U. S. C. A., Title 38, Section 454a). In the *Bradley* case, *supra*, the Court said at page 575:

“Clearly, the insured did not designate or intend to designate both his mother and wife as joint beneficiaries—one of them is the sole beneficiary to the exclusion of the other. *It follows therefore that an agreement to divide the proceeds of the policy constitutes an assignment by the designated beneficiary of payments of benefits due or to become due under a National Service Life Insurance policy, and that such assignment is specifically prohibited by Section 3 of the Act of August 12, 1935, 49 Stat. 609, as amended by Section 5 of the Act of October 17, 1940, 54 Stat. 1195, 38 U. S. C. A. Section 454a. Robertson v. McSpadden, D. C., 46 F. 2d 702. The trial court did not err by its refusal to recognize or give effect to the agreement.*” (Italics supplied.)

The Federal Statute applies in the instant case as in the case of *Bradley v. United States, supra*. Petitioners respectfully assert that the decision of the Supreme Court of Kansas in this case shows a total disregard for the application of the established Federal statute (Act of August 12, 1935, Chapter 510, Section 3, 49 Stat. 609, as amended by Section 5 of the Act of October 17, 1940, 54 Stat. 1195; U. S. C. A., Title 38, Section 454a, to Petitioner's case. Respondent's alleged contract with Petitioners, even if actually entered into, which Petitioners deny, is void, invalid, and illegal in view of the controlling Federal statute *supra*. Petitioner's rights are violated by the action of the Supreme Court of Kansas in completely ignoring the Federal

Statute, and Petitioners respectfully submit they were and are clearly entitled to have the pertinent Federal Statute applied to their case.

Respectfully submitted,

RUSSELL N. PICKETT,  
HERBERT S. BROWN, . . . . .  
*Counsel for Petitioners.*

RUSSELL L. HAZZARD,  
CARL VAN RIPER,  
*Of Counsel.*

**ADDENDUM No. 1****IN THE DISTRICT COURT OF FORD COUNTY,  
KANSAS**

**DONALD LINLEY FRENCH**, a Minor, by Mildred B. French,  
His Mother and Next Friend, *Plaintiff*,

vs.

**ASA RAY FRENCH** and **GLENDA BEATRICE FRENCH**, *Defendants*

No. 14,943

**Certificate**

I, the undersigned, Karl Miller, Judge of the District Court of Ford County, Kansas, hereby certify that at the trial of the case of Donald Linley French, a Minor, by Mildred B. French, His Mother and Next Friend, *vs.* Asa Ray French and Glenda Beatrice French, in said District Court of Ford County, Kansas, being Case No. 14,943 on the docket of said court, Carl Van Riper appeared as attorney for defendants, Asa Ray French and Glenda Beatrice French, and then argued and urged that the alleged oral agreement between Asa Ray French and Glenda Beatrice French and their son, Donald Ray French, was void, illegal and of no effect because any such agreement would be in violation of the Federal Statute prohibiting the assignment of the proceeds of the United States Government Life Insurance, 38 United States Code Annotated, Section 454a, and then offered or cited in support thereof the decision of the United States Circuit Court of Appeals for the Tenth Circuit in the case of Bradley *vs.* United States *et al.*, 143 Federal (2nd) 573, and then furnished the undersigned with a copy of said decision.

In Witness Whereof, I have hereunto set my hand this 6th day of July, 1946.

(S.) KARL MILLER,  
*Judge of the District Court  
of Ford County, Kansas.*

Attest:

[SEAL.] (S.) ELTA J. RILEY,  
[L.S.] *Clerk of Said Court.*

(5649)